

Mail Stop Interference  
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Paper 52  
Filed: December 5, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Merck and Co., Inc.  
Junior Party  
(U.S. Patent Application 10/587,601),

v.

Japan Tobacco Inc.  
Senior Party  
(U.S. Patent 7,211,572).

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Patent Interference No. 105,655 (MPT)  
(Technology Center 1600)

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*Before: SALLY GARDNER LANE, SALLY C. MEDLEY, and MICHAEL P.  
TIERNEY, Administrative Patent Judges.*

*TIERNEY, Administrative Patent Judge.*

Judgment – Bd.R. 127

A conference call was held on November 24, 2008 at approximately 2:00  
p.m., including:

1. Eugene Rzucidlo, counsel for Merck,

1           2.     Jerry Voight, counsel for Japan Tobacco, and

2           3.     Michael Tierney, Administrative Patent Judge.

3           Merck's sole substantive motion, Merck's Motion 1 to redefine the  
4 interference, was granted in the Order, dated November 18, 2008, Paper 50 and the  
5 interference was redeclared with a new Count, Count 2. (Order, Paper 50, and  
6 Redeclaration, Paper 51).

7           Counsel for Merck represented during the conference call that Merck will  
8 not be filing a priority statement and will not be filing any further motions in this  
9 interference. Counsel for Merck did not object to entry of adverse judgment based  
10 on Merck's abandonment of the contest. 37 C.F.R. 41.127(b)(4).

11          It is:

12                Ordered that judgment be entered against Merck for Count 2, the sole  
13 count in interference (Paper 51, p. 2).

14                Further Ordered that claims 24-39 of Merck's involved application,  
15 U.S. Application 10/587,601, be **FINALLY REFUSED**, 35 U.S.C. §135(a).

16                Further Ordered that a copy of this judgment be entered in the  
17 administrative records of the involved Japan Tobacco U.S. Application 11/255,605  
18 and Merck U.S. Application 10/587,601.

cc (via electronic filing):

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